



STATE OF MAINE
PUBLIC UTILITIES COMMISSION
18 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0018

THOMAS L. WELCH
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January 9, 1997

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FEDERAL COMMUNICATIONS COMMISSION

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 96-45 FEDERAL-STATE JOINT BOARD ON
UNIVERSAL SERVICE

Dear Mr. Caton:

Enclosed are an Original and ten copies of the Reply Comments of the Maine Public Utilities Commission and the Vermont Service Board. The name of the Vermont Public Service Board was inadvertently omitted from the first page. Please replace the previous copy with the corrected copy. Sorry for any inconvenience this may have caused.

Please return a stamped copy in the enclosed stamped envelope.

Sincerely,

Joel Shifman

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

Reply Comments of the
State of Maine Public Utilities Commission
the State of Vermont Public Service Board

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Date: January 9, 1997

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

Reply Comments of
The State of Maine Public Utilities Commission and
The State of Vermont Public Service Board

The Maine Public Utilities Commission (MPUC) and the Vermont Public Service Board appreciate the opportunity to file reply comments in response to the November 18, 1996, Public Notice (DA 96-1891) concerning the Recommended Decision of the Joint Board in this docket.

In their initial comments in this docket, some commenters (USTA p.17, Rural Coalition p.31) may be suggesting that the intrastate jurisdictional nature of a portion of the costs incurred to provide universal service narrows the legal responsibility under section 254(b) of the Act for the Joint Board and the Commission to provide adequate funds so that quality service can be available in the nation's rural areas at rates that are just, reasonable, affordable, and comparable with those charged in urban areas. Furthermore, some commenters and the Joint Board appear to be drawing a connection between the size and sufficiency of the fund and the manner by which money needed to finance the fund is recovered from carriers.


It is our position that the statutory duties required under section 254(b) are a Federal responsibility regardless of the jurisdictional nature of the costs.

Furthermore, the size of the "fund" and "sufficiency" considerations cannot depend on whether or not intrastate revenues are used as a basis for determining carrier contributions.

Notwithstanding these positions, we do not believe it would be unlawful for the Commission to use the total revenue of interstate carriers as the basis for funding the Federal universal service fund. Rather than restate the comments we made to the Joint Board regarding these issues, we have attached to these reply comments the relevant portions of those comments for the Commission's consideration.

Respectfully submitted,

For the
MAINE PUBLIC UTILITIES COMMISSION



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For the
VERMONT PUBLIC SERVICE BOARD



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Certificate of Service

I, Joel B. Shifman, hereby certify that on this 9th day of January, 1997, copies of the foregoing reply comments of the State of Maine Public Utilities Commission and the State of Vermont Public Service Board in the above docket were served by first class mail, postage prepaid, to the parties listed on the attached service list.



Joel B. Shifman

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FCC 96-93

In the Matter of
Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

COMMENTS OF:

**THE STATE OF MAINE PUBLIC UTILITIES COMMISSION,
THE STATE OF MONTANA PUBLIC SERVICE COMMISSION,
THE STATE OF NEBRASKA PUBLIC SERVICE COMMISSION,
THE STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION,
THE STATE OF NEW MEXICO STATE CORPORATION COMMISSION,
THE STATE OF UTAH PUBLIC SERVICE COMMISSION,
THE STATE OF VERMONT DEPARTMENT OF PUBLIC SERVICE AND
PUBLIC SERVICE BOARD, AND
THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**

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SUMMARY

The Telecommunications Act of 1996 imposes an extraordinary burden on the Commission, to ensure that rates are reasonably comparable between rural, insular and high cost areas on the one hand and urban areas on the other. This statutory goal will not be met if the Commission fails to establish a high cost funding mechanism that is adequately funded. That system must also be targeted accurately to high cost areas. It should be based on reported costs of carriers, not on rates, since rates are extremely difficult to compare accurately and proxy models are not yet sufficiently mature to serve as a basis for distributing funds. In distributing funds, the Commission should avoid using any criteria that do not drive cost, such as the size of a company or the size of its study area. Although local rate measurement is necessarily too inexact to serve as a basis for fund distributions, the Commission should nevertheless seek data on rates and develop a mechanism for comparing rates.

State universal service programs are authorized under the 1996 Act, but the federal program should be sufficient to permit states to support supplemental programs and services. In establishing a definition of services supported by universal service funds, the Commission should balance the desire to support advanced services against any size limits it perceives for the funding system.

If the Commission desires to increase the subscriber line charge, it should do so only if it transfers responsibility for paying that charge from customers, who now perceive it as a local service charge, to interexchange carriers, who use the local loop as a part of their business. This interpretation will restore the separations principles established by the United States Supreme Court in *Smith v. Illinois Bell Telephone Company*.

The Commission should finance universal service programs by fairly collecting revenues from all service providers. "Net revenue" should be the preferred method to raise revenue because it is competitively neutral. Finally, Vermont's experience with a neutral administrator suggests that model could work at the federal level.

COMMENTS

The Commenting States

The Commenting States are statutorily responsible for establishing just and reasonable rates, charges and practices for public utilities within their jurisdictions. They therefore are "State commission(s)" within the meaning of the Telecommunications Act of 1996.¹ The eight Commenting States are Maine, Montana, Nebraska, New Hampshire, New Mexico, Utah, Vermont, and West Virginia. They hereby submit their comments on the Commission's Notice of Proposed Rulemaking and Order Establishing Joint Board.

Rural, Insular and High Cost Areas - The Statutory Standard

Section 254(b) prescribes seven principles for guidance in designing policies for the preservation and advancement of universal service. Principle (3), states, in part, that:

Consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. (emphasis added).

This principle must be acknowledged when determining the overall level and structure of universal service assistance.

These seven principles provide much more detailed guidance to the Commission on the goals for universal service than was available under the 1934 Act.

¹ E.g. 1996 Act, Sec. 101(a), §§ 251(e), 252(b).

Adequacy of Assistance to Rural, Insular and High Cost Areas

Universal service funding provided by the Commission to support high cost areas must be adequate to meet the new and ambitious statutory objectives found in the 1996 Act.² If the new system does not distribute sufficient funds to the state based upon a nondiscriminatory cost analysis, then "reasonably comparable" rates will simply not be possible, no matter how well designed the mechanisms to distribute assistance. Whatever mechanism the Commission selects to distribute assistance, it must provide adequate funding as well.

Adequate funding may require significantly greater federal assistance than existing programs.³ At present, there is little or no difference between rural and urban rates in many study areas. This condition is not due to federal efforts, but exists because states have established rate designs that impose average rates on both high cost and low cost areas. These rate designs amount to implicit transfers by the states, and have the effect of supporting universal service. As competition matures across the country, states will find increasing difficulty in maintaining average rates. To the extent that states permit de-averaging of rates, the transfers that are now implicit in existing rate

² Act of 1996, Sec. 101(a), §254(b)(3). The NPRM suggests that the Commission is aware of this increase in scope of the program. NPRM, paragraph 14, footnote 39. Previously, assistance to high cost areas was intended to "ensure that telephone rates are within the means of the average subscriber in all areas of the country." *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 96 FCC2d 781, 795 (1984).

³ One way to estimate the scale of the problem is to estimate the additional revenue needed to eliminate the dichotomy between large and small companies under the existing mechanism. If all local exchange carriers had been given assistance under the "small company" formula in 1994, the cost of the fund would have been approximately \$1.33 billion, rather than the \$0.77 billion actually distributed. If the Commission should also decide to merge the high cost fund with the DEM weighting program, the net cost increase might be smaller, since in many cases the carriers that receive significant DEM benefits do not have high loop costs.

designs must be converted into explicit transfers under the direction of the Commission's universal service mechanisms.

Increased funding may conflict with the historical desire of the Commission to limit the growth of its existing High Cost Fund.⁴ However, these concerns were expressed before the 1996 Law was enacted. Since the 1996 Act gives the Commission new ways to raise universal service monies,⁵ the Commission's concern may have been lessened.

The 1996 Act authorizes state universal service programs,⁶ but it also delegates to the Commission the principal responsibility to ensure that national universal service objectives, including reasonably comparable rates between urban and rural areas, are met. Nothing in the law suggests that the federal responsibility to ensure that rates are "reasonably comparable" is conditional upon state participation, nor upon a state paying a "share" of the cost. Thus the Commission must design universal service mechanisms, based upon federal funding, that will be capable of avoiding non-comparable rates in rural, insular and high costs areas. The Commission should not suppose that State funds will be required in order to achieve this basic purpose.

As the Commission undertakes to design a new system, it will face the prospect of a much larger program than in the past. Yet it must resist the temptation to set an arbitrary upper limit on

⁴ For example, in Docket 80-286, *In re Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, the Commission issued a Notice of Proposed Rulemaking and Notice of Inquiry, FCC 95-282, released July 13, 1995. That notice proposed several measures to limit expenditures under the existing high cost assistance program, including establishing a "cap" on the size of the fund. ¶¶ 47-50.

⁵ The Commission is considering, for example, carrier contributions as a percentage of revenues, net of payments to other carriers. NPRM, paragraph 123. A similar proportional charge, net of wholesale transactions, has been successfully used to support Vermont's Universal Service Fund, thereby replacing a per-access line charge.

⁶ 1996 Act, Sec. 101(a), §254(f).

the funding that will be needed to achieve the statutory purpose. Certainly any high cost assistance program should provide incentives for efficient operation by service providers, and no funds should be raised that are not needed. However, the converse is equally true; all funds needed to meet the statutory objectives must be raised and distributed.

Targeting of Assistance to Rural, Insular and High Cost Areas

Paragraph 27 of the NPRM seeks comment on how to calculate the payments needed to support universal and affordable service in rural, insular, and high-cost areas. The most important aspect of such a mechanism is that it effectively targets those geographical areas with the greatest need. The Commission must seek those criteria that will most effectively achieve the statutory goal and it should not use criteria that are irrelevant to or detract from achieving the goal.

High Cost Funds Should be Directed by Costs, Not Rates; Rates May be Used As An Indicator of Success in Managing Costs

Although "reasonably comparable rates" is a statutory objective of the 1996 Act, the mechanism designed by the Commission should not rely upon local rates as inputs into the calculation. As explained below, there are too many variables used in setting local rates, and too many different rate structures for rate comparisons to become a meaningful basis upon which to calculate assistance.⁷ Rather, while consumer rates should be monitored, they should be used only as an indicator of overall program effectiveness.

⁷ There may be additional reasons to avoid using consumer rates as a direct input into the formula for assistance to rural and high cost areas. For example, such a system might give inappropriate incentives to state commissions in setting rates.